BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **ERIN LEARY,** **Bar No. 020728** Respondent.	**PDJ 2017-9041** **FINAL JUDGMENT AND ORDER** [State Bar No. 15-2696] **FILED JUNE 15, 2017**

The Presiding Disciplinary Judge having reviewed pursuant to Rule 57(a), Ariz. R. Sup. Ct., the Agreement for Discipline by Consent filed on May 26, 2017, accepted the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **Erin Leary**, **Bar No. 020728,** is admonished for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED Ms. Leary shall pay the costs and expenses of the State Bar of Arizona in the amount of $1,225.00, within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk

and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 15th day of June, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 15th day of June, 2017, to:

Larry J. Cohen
Cohen Law Firm
PO Box 10056
Phoenix, AZ 85064-0056
Email: ljc@ljcohen.com
Respondent's Counsel

Nicole S. Kaseta
Bar Counsel
State Bar of Arizona
4201 N, 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **ERIN LEARY,** **Bar No. 020728** Respondent.	**PDJ-2017-9041** **DECISION AND ORDER ACCEPTING DISCIPLINE BY CONSENT** [State Bar File No. 15-2696] **FILED JUNE 15, 2017**

Probable Cause issued on February 21, 2017 and a formal complaint was filed on April 3, 2017. The parties filed their Agreement for Discipline by Consent on May 26, 2017 pursuant to Rule 57(a), Ariz. R. Sup. Ct.

Rule 57 requires admissions be tendered solely "…in exchange for the stated form of discipline…." Under that rule, the right to an adjudicatory hearing is waived only if the "…conditional admission and proposed form of discipline is approved…." If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Ms. Leary has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. Notice of this Agreement and an

opportunity to object as required by Rule 53(b)(3), Ariz. R. Sup. Ct., was provided by letter to the complainant on May 14, 2017. No objections have been filed.

The Agreement details a factual basis to support the conditional admissions. Ms. Leary conditionally admits she violated Rule 42, ERs 1.7 (conflict of interest), and 1.8(e) (prohibited transactions). The agreed upon sanctions include an admonition and the payment of $1,225.00 in costs and expenses within thirty (30) days of this Order. The conditional admissions are briefly summarized.

On April 20, 2015, Ms. Leary began representation of a client in an intestacy adjudication. Ms. Leary communicated with another attorney regarding distributions from the estate of the client's father to the client.

On June 19, 2015 Inheritance Funding Company (IFC) filed a notice stating that the client transferred $12,250 of his interest in his father's estate to IFC for an immediate cash payment of $7,500. On August 6, 2015, IFC filed a second notice stating that the client assigned $19,000 of his interest in the estate to IFC for $12,500.

On September 25, 2015, the other attorney filed a petition for instructions stating that Ms. Leary had asked for distributions to her client of $4,000 for "emergency reasons," specifically that her client "had no money and no clothes after losing his apartment. . . ." The petition for instructions stated that distribution was made to the client on September 8, 2015 and that the client asked for another distribution eight days later. In the petition, there was a concern that the client "may

be unable to manage his financial affairs," but a distribution of $35,000 was available to the client. The attorney requested that the court investigate whether a conservatorship is necessary for the client.

On October 20, 2015, the court held a hearing on the petition for instructions where Ms. Leary appeared in behalf of the client. Ms. Leary advocated for another distribution to the client and informed the court the client was living at one of her rental properties, and the distributions would allow him to make other living arrangements. The court ordered that the personal representative "shall release no further monies from the estate without a Court Order."

On October 27, 2015, another attorney, who was also guardian ad litem for the client, filed a petition for emergency appointment of temporary guardian and conservator of an adult and for permanent appointment of the same. The petition also stated that the client is "diminished cognitively, having difficulty in making rational personal, medical or financial decisions," and that the client needed a guardian to make decisions regarding his treatment, finances and housing. The petition also provided that the client had a beneficial interest in his father's estate of $57,000 and that the client was homeless and that "his conduct in Court on October 20, 2015 was alarming and demonstrated a probable need for immediate appointment of Guardian and Conservator."

On October 28, 2015, the court entered a minute entry where it noted that Ms. Leary appeared for a hearing for the client and "advocated her client to receive immediate distribution of his share of the Estate proceeds." Ms. Leary also stated that she allowed her client to ". . . . reside in one of her "vacation rental" properties and it was made clear that she was anxious for him to receive his monies so he could move out and vacate her property," and that she "needed to be paid" for representing him on various other matters.

The court found that Ms. Leary had a potential conflict of interest in representing the client in the guardianship/conservator case because appointment of a guardian and conservator may slow down the process of the client moving out and paying Ms. Leary. It would not permit the client to personally handle and receive his money. The client had already obtained advances on his inheritance, and he had spent around $20,000.00 from July 2015 to October 2015. The court inquired what the client did with the funds, and he could be heard in court responding "partying." The court stated it was concerned whether the client had the "requisite mental capacity" to waive any conflict with Ms. Leary and found it appropriate for court-appointed counsel to be assigned. The court also entered an order appointing a temporary guardian and conservator for the client.

On February 12, 2016, Ms. Leary filed a petition for approval of attorney fees. Ms. Leary wrote that although she was not formally appointed as an attorney for the

client, she performed legal services for him and "is entitled to compensation for earned fees." Ms. Leary also wrote that she advanced funds to the client with loans when he was homeless and nearly all those loans had been repaid. Ms. Leary filed and itemized bill with her petition that contended the total amount due is $6,581.00. Ms. Leary also included a letter from the client directing that she be paid her fees. The court granted Ms. Leary's petition for attorney's fees and directed her to "contact the State Bar of Arizona and get an opinion . . . as to whether or not it is proper for her as counsel to loan money to her client."

Rule 58(k) provides sanctions shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, ("*Standards*"). The parties agree *Standard* 4.33, *Failure to Avoid Conflicts of Interest* applies to Ms. Leary's violation of ERs 1.7 and 1.8(e), and provides that reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

Ms. Leary was negligent in her appraisal of the substantial risk that a conflict of interest would arise from her loaning money and providing housing to her client. She had to have email correspondence with the State Bar of Arizona to fully understand the ethical violations and risks of her conduct after the fact. This negligence caused a potential injury to her client in seeking

guardianship/conservatorship because her client being granted such guardianship could delay payment owed to Ms. Leary from her loans to the client. Ms. Leary was also negligent in loaning her client money and becoming his landlord while advocating in probate court that her client should receive distributions from the estate to pay her rent. This also caused potential injury to her client.

The parties agree that the presumptive sanction is reprimand. The parties agree that the only aggravating factor present in the record is *Standard* 9.22(i) substantial experience in the practice of law. Ms. Leary has been licensed to practice law in Arizona since 2000.

The parties further agree the following mitigating factor is present in the record: *Standard* 9.32(a) absence of a prior disciplinary record. The State Bar gives great weight to Ms. Leary's lack of a prior disciplinary record. Ms. Leary also completed the CLE "Ten Deadly Sins of Conflict" while this matter was pending with the State Bar and seven other CLEs on conflicts of interest and diminished capacity clients.

The parties agree that a mitigated sanction is appropriate. Upon consideration, the Presiding Disciplinary Judge finds that the proposed sanction of admonition meets the objectives of attorney discipline. Now therefore,

IT IS ORDERED accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: admonition,

and the payment of $1,225.00 in costs and expenses within thirty (30) days of this Order. There are no costs incurred by the office of the presiding disciplinary judge. A final judgment and order is signed this date.

DATED this June 15, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on June 15, 2017, to:

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by: AMcQueen

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAY 26 2017

FILED

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **ERIN LEARY** **Bar No. 020728** Respondent.	**PDJ 2017-9041** State Bar File Nos. **15-2696** **AGREEMENT FOR DISCIPLINE BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Erin Leary, who is represented in this matter by counsel, Larry J. Cohen, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory

hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by letter on May 14, 2017. Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Copies of Complainant's objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 1.7 and 1.8(e). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Admonition. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.[1] The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

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[1] Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on October 23, 2000.

COUNT ONE (File no. 15-2696/ Morris)

2. On September 7, 2014, Jesse Cole Morris' (Morris) father died.

3. On February 3, 2015, attorney Stephen Follett filed a petition for adjudication of intestacy and appointment of personal representative in the Maricopa County Superior Court relating to Morris' father.

4. The petition lists Morris as an heir and an estate worth approximately $90,000.

5. On March 26, 2015, the court appointed a personal representative.

6. On approximately April 20, 2015, Respondent commenced representation of Morris.

7. Respondent communicated with Mr. Follett regarding obtaining distributions from the estate for Morris.

Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

8. On June 19, 2015, Inheritance Funding Company (IFC) filed a notice stating that Morris transferred $12,250 of his interest in the estate to IFC in exchange for an immediate cash payment of $7,500.

9. On August 6, 2015, IFC filed a second notice stating that Morris assigned $19,000 of his interest in the estate to IFC in exchange for $12,500.

10. On September 25, 2015, Mr. Follett filed a petition for instructions stating that Morris asked for distributions for "emergency reasons."

11. Specifically, the petition for instructions references that Respondent asked for an emergency distribution of $4,000 because Morris "had no money and no clothes after losing his apartment. . . ."

12. The petition for instruction states that this distribution was made on September 8, 2015 but that Morris asked for another distribution eight days later.

13. In the petition for instructions, Mr. Follett wrote that he was concerned that Morris "may be unable to manage his financial affairs" but that a distribution of $35,000 is available to Morris.

14. Mr. Follett requested that the court investigate whether a conservatorship is necessary for Morris.

15. On October 20, 2015, the court held a hearing on the petition for instructions.

16. Respondent appeared at the October 20, 2015 hearing on behalf of Morris.

17. At the hearing, Respondent advocated for another distribution to Morris.

18. At the hearing, Respondent informed the court that Morris was living at one of her rental properties and that a distribution would enable him to make other living arrangements.

19. The court ordered that the personal representative "shall release no further monies from the estate without a Court Order."

20. On October 27, 2015, attorney Shad Blackford (guardian ad litem for Morris) filed a petition for emergency appointment of temporary guardian and conservator of an adult and for permanent appointment of the same.

21. The October 27, 2015 petition states that Morris is "diminished cognitively, having difficulty in making rational personal, medical or financial decisions" and that Morris needs a guardian to make decisions regarding his treatment, finances, and housing.

22. The October 27, 2015 petition further states that Morris has his own legal counsel, Respondent, and requests that the court appoint Respondent as Morris' counsel.

23. The October 27, 2015 petition provides that Morris has a beneficial interest in his father's estate in the amount of $57,000.

24. The October 27, 2015 petition further provides that Morris is homeless and that "his conduct in Court on October 20, 2015 was alarming and demonstrated a probable need for immediate appointment of Guardian and Conservator."

25. On October 28, 2015, the court entered a minute entry.

26. In its October 28, 2015 minute entry, the court noted that Respondent appeared for a hearing for Morris and "advocated for her client to receive immediate distribution of his share of the Estate Proceeds."

27. In its October 28, 2015 minute entry, the court further stated:

> However, she [Respondent] also stated that she had allowed her client to move into and reside in one of her "vacation rental" properties and it was made clear that she was anxious for him to receive his monies so he could move out and to vacate her property. She also stated that she had been representing him on various other matters and that she "needed to be paid." The Court finds that Ms. Leary may have a conflict of interest in representing [Morris] in the

> guardianship/conservatorship case. During that hearing, it was stated that [Morris] had been removed (possibly evicted) from his former living arrangements and that [Respondent] then permitted him to move into a "vacation property" that she owns. She wants him to move out and to pay her. Appointment of a guardian and conservator may slow down the process as it would not permit [Morris] to personally receive and handle his money. As stated on the record, during that hearing, [Morris] has already obtained "advances" on his inheritance and it appears he has squandered approximately $20,000.00 since July 2015. During the hearing, when then [sic] Court inquired what [Morris] did with these funds, he could be heard in the court responding "partying", then adding an explicative. When it became clear this Court was not going to release funds to him that day, he stood up in Court and repeatedly stated that he was firing [Respondent] as his counsel, and repeating the same mentioned explicative.

28. In its October 28, 2015 minute entry, the court stated that it was concerned whether Morris had the "requisite mental capacity" to waive any conflict with Respondent.

29. In its October 28, 2015 minute entry, the court found "it appropriate for court-appointed counsel to be assigned in this case."

30. On November 5, 2015, the court entered an order appointing a temporary guardian and conservator for Morris.

31. On February 12, 2016, Respondent filed a petition for approval of attorney fees.

32. In her February 12, 2016 petition, Respondent wrote that she provided Respondent legal advice regarding his father's estate, with an eviction, three arrests, and with "a business issue with the sale of goods on Amazon.com."

33. In her February 12, 2016 petition, Respondent wrote that she was not formally appointed as an attorney for Morris but performed legal services for him and "is entitled to compensation for earned fees."

34. In her February 12, 2016 petition, Respondent further wrote that she advanced funds to Morris in the form of loans whenever Morris was homeless "and nearly all of these loans have been repaid by [Morris] with the exception for the purchase of a sleeping bag . . . and gas money. . . ."

35. Respondent noted these advances, including the advances which were not repaid, on an "itemized bill" that she filed with her February 12, 2016 petition.

36. The itemized bill includes time entries from April of 2015 until January of 2016.

37. The itemized bill contends that a total amount is due of $6,581.00.

38. Entries on the itemized bill include an entry on September 7, 2015 for taking Morris to motel "check him in on my credit card (reimbursed later), bought

groceries for client per his request (reimbursed later) . . ." and "[b]ought client new phone and minutes for one month (reimbursed later) on September 8, 2015."

39. Respondent included with her February 12, 2016 petition a letter from Morris directing that Respondent be paid her fees.

40. On February 22, 2016, Respondent sent Morris a letter stating that she no longer represents him.

41. On June 30, 2016, the court granted Respondent's petition for attorney fees but directed Respondent to "contact the State Bar of Arizona and get an opinion . . . as to whether or not it is proper for her as counsel to loan money to her client."

42. The court noted in its June 30, 2016 order that "[s]everal of the entries in the 'Itemized Statement' describe counsel loaning/advancing money to [Morris]."

43. On July 27, 2016, Respondent sent an email to intake bar counsel and sba.communications@azbar.org.

44. Respondent's July 27, 2016 email seeks an opinion on whether it is ethical to loan a client money for clothes and shelter.

45. Respondent's July 27, 2016 email states: "FYI, I also did other things for the client in question, like drive him to court hearings (criminal cases and for his conservatorship, cases in which I did not represent him, and his eviction hearing, where I did represent him, etc.), loan him money for cigarettes (and drive some to his location) because I learned that he became extremely agitated when he ran out. . . . I also bailed him out of jail, mostly using his own money. . . . He paid me back 99% of the time whenever he got money, FYI."

46. Intake bar counsel subsequently learned that Respondent had driving under the influence convictions in Nebraska in 2005 and 2010. Intake bar counsel asked Respondent about her prior convictions.

47. On October 25, 2016, bar counsel sent Respondent a screening letter that included documentation from the probate case and her correspondence with intake bar counsel.

48. The October 25, 2016 screening letter directs Respondent to address ethical rules 1.5, 1.7, 1.8, 8.4(b), and 8.4(d).

49. On October 26, 2016, Respondent sent a letter to bar counsel stating: "Nowhere in the file is there any indication of any specific 'professional conduct' that warrants a screening investigation."

50. In her October 26, 2016 letter, Respondent wrote that the references to the ethical rules were puzzling.

51. In her October 26, 2016 letter, Respondent stated that intake bar counsel would not identify her specific misconduct and asked "[i]s this the way the State Bar of Arizona operates?"

52. In her October 26, 2016 letter, Respondent requested that bar counsel "inform me of the specific rules and specific conduct."

53. On October 27, 2016, bar counsel sent Respondent an email asking her to address the ethical rules referenced in the October 25, 2016 screening letter including in relation to the reasonableness of the fees she charged Morris and her relationship to Morris.

54. Respondent responded that "It's simply impossible to respond to the charge without clarification from the Bar. . . ."

55. Bar counsel replied and directed Respondent to respond to the October 25, 2016 screening letter by November 14, 2016 and to seek the assistance of counsel if she had further questions about the screening process.

56. Respondent responded to the October 25, 2016 screening letter despite her claim that it would be impossible to do so.

57. On February 21, 2017, the Attorney Discipline Probable Cause Committee (ADPCC) entered an Order of Admonition, CLE, and Costs (Admonition) against Respondent. (Exhibit B).

58. The Admonition provides that Respondent violated ER 1.7 "including for loaning her client money, making purchases for him, and providing him a residence while at the same time advocating in probate court that her client should receive distributions from the probate estate."

59. The Admonition provides that Respondent violated ER 1.8(e) "including for loaning her client money and making purchases for him and including such loans and purchases in a fee petition that Respondent filed in the probate court."

60. The Admonition further provides: "In addition to annual MCLE requirements, Respondent shall complete the following Continuing Legal Education . . . programs: six hours of CLE in the areas of diminished capacity and conflicts of interest . . . ."

61. On March 6, 2017, Respondent submitted a demand for formal proceedings pursuant to Rule 55(c)(4)(B).

62. On March 10, 2017, the ADPCC entered an Order Vacating Admonition, CLE and Costs and directing the State Bar to prepare and file a complaint against Respondent with the disciplinary clerk.

63. On April 3, 2017, the State Bar filed its complaint as directed by the ADPCC.

64. Respondent subsequently completed the following continuing legal education (CLE) courses: (A) CLE Snippet: ER 1.7 Conflict of Interest: Current Clients (.25 hour); (B) Conflicts of Interest: The Basics (1.00 hour); (C) Conflicts of Interest or "What Did I do Wrong?" (1 hour); (D) Ethics Issues and Problems Representing Clients with Diminished Capacity (1 hour); (E) Ethical Issues in Making Capacity Decisions (1.75 hours); (F) An Introduction to Mental Health Law (1 hour); and (G) Ethical Considerations of Litigation Funding (1 hour). (Exhibit C).

65. Additionally, when this matter was pending with the State Bar in intake, Respondent completed the CLE titled Ten Deadly Sins of Conflicts. (Exhibit D).

66. Accordingly, Respondent completed the six hours of CLE that the ADPCC originally ordered in its Admonition.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that her conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.7 and 1.8(e).

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Admonition.

If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the

imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley,* 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that *Standard* 4.33 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.33 provides: "Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client." Respondent loaned Morris money, made purchases for him, and permitted him to reside in her rental property while also informing the probate court that she wanted Morris to move out of her rental property and

advocating to the probate court that her client should receive distributions from the probate estate. Respondent also included certain of the purchases that she made for Morris in her fee petition that she filed in the probate court. Respondent's conduct was negligent. Respondent states that she only advocated for a distribution from the probate estate because her client requested that she do so and not so that her client would have the financial resources to move out of her rental property. Respondent was also negligent in that she did not understand that ER 1.8(e) applied as a result of the fee petition that she filed with the probate court.

The duty violated

As described above, Respondent's conduct violated her duty to her client.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent negligently engaged in a conflict of interest and that her conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to Respondent's client.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is reprimand. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22(i), substantial experience in the practice of law. Respondent has been licensed to practice law in Arizona since 2000.

In mitigation:

Standard 9.32, absence of a prior disciplinary record.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the sanction should be mitigated to an admonition.

This agreement was based on the following: The State Bar gives great weight to Respondent's lack of disciplinary history. Additionally, Respondent completed the CLE "Ten Deadly Sins of Conflict" while this matter was pending with the State Bar in intake and when the State Bar alerted Respondent to the

conflict of interest. Respondent has also completed further CLEs on conflicts of interest and diminished capacity clients as demonstrated by Exhibit C.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of admonition and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit E.

DATED this 26th day of May 2017

STATE BAR OF ARIZONA

Nicole Kaseta

Nicole S. Kaseta
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 26th day of May, 2017.

Erin Leary
Respondent

DATED this 26th day of May, 2017.

Cohen Law Firm

Nicole Kosta (on) (approved as to form & content)

Larry J. Cohen
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this _____ day of May, 2017.

_____
Erin Leary
Respondent

DATED this _____ day of May, 2017.

Cohen Law Firm

_____
Larry J. Cohen
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 26th day of May, 2017.

Copy of the foregoing emailed
this 26th day of May, 2017, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 26th day of May, 2017, to:

Larry J. Cohen
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Respondent's Counsel

Copy of the foregoing hand-delivered
this 26th day of May, 2017, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: Karen E. Calcagno
NSK/kec

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Erin Leary, Bar No. 020728, Respondent

File No. 15-2696

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings	**$1,200.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

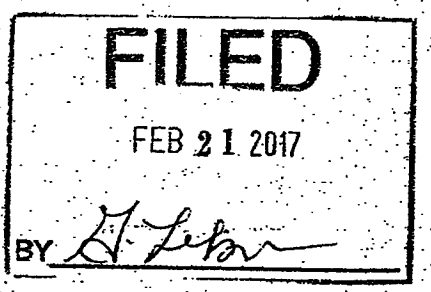
Staff Investigator/Miscellaneous Charges

03/04/16	LexisNexis Invoice	$ 25.00
Total for staff investigator charges		$ 25.00

TOTAL COSTS AND EXPENSES INCURRED $1,225.00

EXHIBIT B

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA



IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,

ERIN LEARY,
Bar No. 020728,

Respondent.

No. 15-2696

ORDER OF ADMONITION, CLE, AND COSTS

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on February 10, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 8-1-0, the Committee finds probable cause exists that Respondent violated Rule 42, Arizona Rule of the Supreme Court, ERs 1.7 and 1.8(e) and is hereby admonished as the follows: Respondent is being admonished for violating ER 1.7, including for loaning her client money, making purchases for him, and providing him a residence while at the same time advocating in probate court that her client should receive distributions from the probate estate. Respondent is also being admonished for violating ER 1.8(e), including for loaning her client money and making purchases for him and including such loans and purchases in a fee petition that Respondent filed in the probate court.

IT IS THEREFORE ORDERED issuing an Order of Admonition for Respondent's conduct pursuant to Rules 55(c)(1)(D) and 60(a)(4), Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED In addition to annual MCLE requirements, Respondent shall complete the following Continuing Legal Education ("CLE") programs:

six hours of CLE in the areas of diminished capacity and conflicts of interest within 90 days from the date of service of this Order. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the programs by providing a copy of handwritten notes. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

IT IS FURTHER ORDERED, pursuant to Rule 60(b), Ariz. R. Sup. Ct., that Respondent shall pay the costs and expenses of these proceedings, as set forth in the attached Statement of Costs and Expenses, within thirty (30) days from the date of service of this Order.

PURSUANT to Rules 60(a)(4) and 70(a)(2), Ariz. R. Sup. Ct., this order will be entered in the Respondent's permanent record at the State Bar and is not confidential. Pursuant to Rule 48(k)(3), Ariz. R. Sup. Ct., it may be considered by the Attorney Discipline Probable Cause Committee, the Presiding Disciplinary Judge, a Hearing Panel, or the Supreme Court in recommending or imposing discipline in a subsequent disciplinary proceeding against Respondent.

NOTICE OF RIGHT

Parties may not file motions for reconsideration of this Order.

PURSUANT to Rule 55(c)(4)(B), Ariz. R. Sup. Ct., within ten (10) days of service of this Order, Respondent has the right to demand that a formal proceeding be instituted and issuance of an Order to Vacate this Order whereupon this order will be vacated and the matter disposed of in the same manner instituted before the Presiding Disciplinary Judge. This demand shall be filed with the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona, 1501 W. Washington,

Suite 104, Phoenix, AZ 85007-3231 with a copy to the State Bar of Arizona. The demand must comply with Rule 8(c), Ariz. R. App. Proc.

DATED this 21 day of February, 2017.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

Original filed this 21st day
of February, 2017, with:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 22nd day
of February, 2017, to:

Erin Leary
14300 N. Northsight Boulevard, Suite 112
Scottsdale, Arizona 85260-3673
Respondent

Jesse Cole Morris
424 W. Broadway
Mesa, Arizona 85210
Complainant

Copy emailed this 22nd day
of February, 2017, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

Compliance Monitor
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016

by: Karen E. Calcapio

EXHIBIT C

Done azbar.inreachce.com

Print

Certificate of Completion

State Bar of Arizona

Name: Erin Leary
Member ID:020728
Purchase Date: Monday, May 15, 2017
Completion Date:5/15/2017 1:40 AM Arizona
Transaction ID:70558148-5b5b-43e9-8a8e-72797b8cfd31

Course Title:CLE Snippet: ER 1.7 Conflict of Interest: Current Clients
Course Number:A1409-499
Duration:22 minutes
Course Type: OnDemand
Faculty: Keith Swisher, Law Professor

Original Course Provider: State Bar of Arizona

Credit Information:0.25 CLE;
0.25 Ethics

ourse Description:
n overview of E.R. 1.7

lease allow 48-72 hours for your completed CLE seminar to show on your State Bar of Arizona CLE tracking page. Self-study courses must be nanually entered on your CLE tracking page.

you attended a State Bar event but it does not appear on your tracking page, **contact the CLE department at 602-340-7323 or email leinfo@staff.azbar.org to have it corrected before submitting your affidavit.**

EMINDER: To ensure compliance with Rule 45(f), Ariz. R. Sup. Ct., records of continuing legal education are to be maintained by the member for hree years after the filling of your annual MCLE affidavit. Records may be maintained in an electronic format. Record retention requirements for ther MCLE jurisdictions are the responsibility of the member to determine.

Attorney Credits
ONLINE EDUCATION

CERTIFICATE OF COMPLETION

FOR

ARIZONA (AZ) MCLE CREDIT

Erin Leary

HAS SUCCESSFULLY COMPLETED

Conflicts of Interest: The Basics

TOTAL Hours: In its entirety, this program may provide 1.00 hrs Interactive CLE credit hours based on a 60-minute hour.

Legal Ethics: **1.00 hrs**

PROVIDER: Attorney Credits
PROVIDER NUMBER: N/A

COURSE COMPLETION DATE: **04/23/2017**
BAR NUMBER: **020728**

Lawline

This is to certify that Erin Leary has successfully completed a Lawline Course.

PROGRAM TITLE
Conflicts of Interest or "What Did I Do Wrong?"

LECTURERS
Robert N. Agre

PRODUCTION DATE
November 29, 2016

COURSE COMPLETION DATE
April 23, 2017 12:20pm MST

REPORTING NUMBER

STATE ACCREDITATION
CLE - AZ

DELIVERY METHOD
On Demand

ETHICS
1

- ☐ I attended a total of _____ (hr/min) of CE of which _____ (hr/min) were in Ethics.
- ☐ These sessions I am claiming had written materials to cover the subject.
- ☐ I listened/viewed the program in a setting suitable to the course and a suitable writing surface was available.
- ☐ I was given the opportunity to participate in discussions with the presenter in the form of an email.

Erin Leary

Bar Number 020728

Signature and Bar Number are required upon submission in the following states: California, Virginia, Texas, and Missouri.

A materially false statement shall be subject to appropriate disciplinary action.

David Schnurman. President of Lawline.

Questions? Call us at
61 Broadway, Suite 1105
New York, NY 10006

2017
1 credit

Certificate of Completion

State Bar of Arizona

Name: Erin Leary
Member ID: 020728
Purchase Date: Monday, April 03, 2017
Completion Date: 4/13/2017 11:02 AM Arizona
Transaction ID: 51329d63-ce77-4d5b-bae3-a836446c1d1a

Course Title: Ethics Issues and Problems Representing Clients with Diminished Capacity
Course Number: W7118-400
Duration: 1 hour
Course Type: Webcast (Live Stream)
Faculty: Larry Cohen

Original Course Provider: State Bar of Arizona

Credit Information: 1.00 CLE;
1.00 Ethics

Course Description:
This program will focus on an ethical problem every lawyer likely will address, but few lawyers think about in advance and even fewer lawyers are prepared to deal with in their practice, the client with diminished capacity.

Please allow 48-72 hours for your completed CLE seminar to show on your State Bar of Arizona CLE tracking page. Self-study courses must be manually entered on your CLE tracking page.

If you attended a State Bar event but it does not appear on your tracking page, **contact the CLE department at 602-340-7323 or email cleinfo@staff.azbar.org to have it corrected before submitting your affidavit.**

REMINDER: To ensure compliance with Rule 45(f), Ariz. R. Sup. Ct., records of continuing legal education are to be maintained by the member for three years after the filling of your annual MCLE affidavit. Records may be maintained in an electronic format. Record retention requirements for other MCLE jurisdictions are the responsibility of the member to determiner.

NATIONAL ACADEMY
OF CONTINUING LEGAL EDUCATION

ARIZONA CONTINUING LEGAL EDUCATION

ATTORNEY AFFIRMATION

Title of Course : Ethical Issues in Making Capacity Decisions

Name of Instructor : Carolyn Reinach Wolf, Esq.

Date Course Completed : 5/13/2017

Credits Earned : 1.75 Ethics

Sku : ETH3800

Format : Online Video **Verification Code(s) :** PROVIDE, COPY

Attendee

Name : Erin Wence **Firm :**

Address : 7764 East San Miguel Avenue

City, State, Zip : Scottsdale, AZ 85250

Phone Number : 402-681-5870 **Fax Number :**

Area of Practice :

Bar Number : 020728 **Birthday :**

For Office Use Only

CERTIFIED CLE CREDIT

(NOT VALID WITHOUT STAMP)

By electronic signature below, I have certified that I have completed the above mentioned course and am entitled to claim CLE credit.
Retain this document for your records for 4 years from date of participation.

Erin Wence
Signature

60 Hempstead Ave, Suite 613, West Hempstead, NY 11552
Telephone : 516.256.0505 Fax : 516.481.4172

Evaluation and Participant Critique

Title of Course: Ethical Issues in Making Capacity Decisions

Attorney Name: Erin Wence

Date Course Completed: 5/13/2017

Rate the course: use the fields below to evaluate the course and the instructors.

Did this program meet your educational objectives? Yes

Did the written materials contribute to the learning experience? Yes

Did the course update or keep you informed of your legal responsibilities? Yes

Did the activity contain significant professional content? Yes

Was the environment suitable for learning (e.q., temperature, noise, lighting, technology, etc.)? Yes

Put any additional comments you would like to make about the course here:

Great seminar!

NATIONAL ACADEMY
OF CONTINUING LEGAL EDUCATION

ARIZONA CONTINUING LEGAL EDUCATION

ATTORNEY AFFIRMATION

Title of Course : An Introduction to Mental Health Law

Name of Instructor : Carolyn Reinach Wolf, Esq.

Date Course Completed : 5/12/2017

Credits Earned : 1 General

Sku : HEA200

Format : Online Video **Verification Code(s) :** CLASS

Attendee

Name : Erin Wence **Firm :**

Address : 7764 East San Miguel Avenue

City, State, Zip : Scottsdale, AZ 85250

Phone Number : 402-681-5870 **Fax Number :**

Area of Practice :

Bar Number : 020728 **Birthday :**

For Office Use Only

CERTIFIED CLE CREDIT

(NOT VALID WITHOUT STAMP)

By electronic signature below, I have certified that I have completed the above mentioned course and am entitled to claim CLE credit.
Retain this document for your records for 4 years from date of participation.

Erin Wence
Signature

60 Hempstead Ave, Suite 613, West Hempstead, NY 11552
Telephone : 516.256.0505 Fax : 516.481.4172

Evaluation and Participant Critique

Title of Course: An Introduction to Mental Health Law

Attorney Name: Erin Wence

Date Course Completed: 5/12/2017

Rate the course: use the fields below to evaluate the course and the instructors.

Did this program meet your educational objectives? Yes

Did the written materials contribute to the learning experience? Yes

Did the course update or keep you informed of your legal responsibilities? Yes

Did the activity contain significant professional content? Yes

Rate the instructor(s):

Carolyn Reinach Wolf, Esq.

Overall teaching effectiveness: Very Good

Knowledge of subject matter: Excellent

Put any additional comments you would like to make about the course here:

NATIONAL ACADEMY
OF CONTINUING LEGAL EDUCATION

ARIZONA CONTINUING LEGAL EDUCATION

ATTORNEY AFFIRMATION

Title of Course : Ethical Considerations of Litigation Funding

Name of Instructor : Jeffrey A. Rubin, Esq.

Date Course Completed : 4/23/2017

Credits Earned : 1 Ethics

Sku : ETH4700

Format : Online Audio **Verification Code(s) :** RAIN

Attendee

Name : Erin Leary **Firm :** Leary & Wence

Address : 14300 N. Northsight Blvd Suite 112

City, State, Zip : Scottsdale , AZ 85260

Phone Number : 480-388-3172 **Fax Number :**

Area of Practice :

Bar Number : 020728 **Birthday :**

By electronic signature below, I have certified that I have completed the above mentioned course and am entitled to claim CLE credit.
Retain this document for your records for 4 years from date of participation.

Erin Leary
Signature

CERTIFIED CLE CREDIT
(NO VALID WITHOUT STAMP)

60 Hempstead Ave, Suite 613, West Hempstead, NY 11552
Telephone : 516.256.0505 Fax : 516.481.4172

EXHIBIT D

Certificate of Completion

State Bar of Arizona

Name: Erin Leary
Member ID: 020728
Purchase Date: Wednesday, March 30, 2016
Completion Date: 4/9/2016 1:05 PM Arizona
Transaction ID: 1dbe019d-241b-481e-9a8c-7393f0b65ac2

Course Title: 10 Deadly Sins of Conflicts
Course Number: JX5C7-400
Duration: 2 hours 56 minutes
Course Type: OnDemand
Faculty: Craig Henley, Bar Counsel, Lynda Shely, Edward F. Novak, Russell Yurk, Patricia Sallen

Original Course Provider: State Bar of Arizona

Credit Information: 3.00 CLE;
3.00 Ethics

Course Description:
An exploration of conflict rules using scenarios to illustrate issues.

Please allow 48-72 hours for your completed CLE seminar to show on your State Bar of Arizona CLE tracking page. Self-study courses must be manually entered on your CLE tracking page.

If you attended a State Bar event but it does not appear on your tracking page, **contact the CLE department at 602-340-7323 or email cleinfo@staff.azbar.org to have it corrected before submitting your affidavit.**

REMINDER: To ensure compliance with Rule 45(f), Ariz. R. Sup. Ct., records of continuing legal education are to be maintained by the member for three years after the filling of your annual MCLE affidavit. Records may be maintained in an electronic format. Record retention requirements for other MCLE jurisdictions are the responsibility of the member to determiner.

EXHIBIT E

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **ERIN LEARY,** **Bar No. 020728,** Respondent.	**PDJ 2017-9041** **FINAL JUDGMENT AND ORDER** [State Bar No. 15-2696]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on _____, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Erin Leary**, is hereby admonished for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $1,225.00, within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 30 days from the date of service of this Order.

DATED this _____ day of May, 2017

_____
William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of May, 2017.

Copies of the foregoing mailed/emailed
this _____ day of May, 2017, to:

Larry J. Cohen
Cohen Law Firm
PO Box 10056
Phoenix, AZ 85064-0056
Email: ljc@ljcohen.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of May, 2017, to:

Nicole S. Kaseta
Bar Counsel
State Bar of Arizona
4201 N, 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this ____ day of May, 2017 to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by:_____